



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 5, 2019

CBCA 6124-DBT

In the Matter of JOHN T.

Kelly Burchell of Burchell & Hughes PLLC, Washington, DC, appearing for Petitioner.

Aaron Pound, Office of General Counsel, General Services Administration, Washington, DC, appearing for General Services Administration.

CHADWICK, Board Judge.

The Board held a “paper hearing” in this debt matter under 41 CFR 105-57.005(b)(4) (2018) as follows. On May 18, 2018, the General Services Administration (GSA) filed the hearing request, with attachments, on behalf of the petitioner, John ■ T ■. After extensions of time, Mr. T ■ filed a hearing statement with additional attachments on December 28, 2018. GSA filed a statement on February 11, 2019, relying on the documents attached to the May 2018 hearing request. By Board order, Mr. T ■ had until February 25, 2019, to make a final filing, but he did not do so. The hearing is closed. This decision is “the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*)” 41 CFR 105-57.005(j).

The GSA records and correspondence attached to the hearing request constitute prima facie evidence that Mr. T ■ separated from GSA with a negative sick leave balance of 60.2 hours. After credit for an annual leave balance of 5.0 hours, the net leave balance was negative 55.2 hours. Mr. T ■ does not challenge the calculation by which GSA valued the 55.2 hours, minus other credits, at \$2774.91. We find that GSA has satisfied its initial “burden of establishing the existence and/or amount of the debt.” 41 CFR 105-57.005(f)(1). We further find that in the agency’s March 2018 demand letter, GSA offered Mr. T ■ “the opportunity . . . [t]o inspect and copy Agency records related to the debt.” 41 CFR

105-57.004(b), (b)(1). (See the last page of the last attachment to the hearing request.) We do not know whether or, if so, how Mr. T [REDACTED] responded to that offer by GSA.

The burden of proof thus shifts to Mr. T [REDACTED] under 41 CFR 105-57.005(f)(2). He does not rebut the agency's time records by articulating a basis to find that he might have taken less sick or annual leave than was recorded in GSA's ETAMS system. Mr. T [REDACTED] submitted a September 2015 memorandum of GSA's Office of the Inspector General (A150070-2) showing that GSA had a systemic problem whereby leave approved in ALOHA was not recorded in ETAMS, the official record. That software problem would tend to cause leave balances in ETAMS to be incorrectly *high*, rather than incorrectly low, however. (The same translation problem caused some employees not to be credited in ETAMS with compensatory time that was approved in ALOHA. The record suggests that this happened to Mr. T [REDACTED]. He does not question the upward correction that GSA made to his compensatory time balance.) Indeed, Mr. T [REDACTED] does not cite a single example of a particular work day on which he contends he was improperly charged leave.

In his December 28 filing, Mr. T [REDACTED] "contends that an audit of [his] time records needs to be done, as there was confusion in the submissions about intermittent telework and extended leave." It is unclear what Mr. T [REDACTED] means by "confusion in the submissions," and he does not elaborate. Our independent review of the emails attached to his December 28 filing reveals some evidence of "confusion" on Mr. T [REDACTED]'s part, due to his failure to reconcile his ALOHA and ETAMS leave balances on a regular basis, as well as evidence that Mr. T [REDACTED]'s superiors acknowledged GSA's own "mistake" in not noticing that his leave balances in ETAMS were not current. We see no evidence of "confusion" about whether Mr. T [REDACTED] was actually on approved leave or teleworking at any given time. In any event, the Board has not been given authority by regulation to order an audit.

Mr. T [REDACTED] asserted in his December 28 filing that GSA had not disclosed his electronic time and attendance records, but that he expected the agency to produce them in separate litigation "no later than January 25, 2019." Because (1) Mr. T [REDACTED] points to no evidence that he responded in a timely manner to GSA's May 2018 offer to disclose the records under 41 CFR 105-57.004(b)(1), and (2) he did not file an update with the Board on the status of discovery in his lawsuit after January 25, 2019, as our hearing schedule permitted, we find that he has waived any argument that he might be entitled to review additional records before we render our decision. *See* 41 CFR 105-57.005(k).

We find that Mr. T [REDACTED] fails to rebut GSA's documentary evidence.

Decision

The debt of \$2774.91 is sustained. The claim is denied.

A handwritten signature in black ink, appearing to read "K. Chadwick", written over a horizontal line. The signature is stylized and includes a large loop at the end.

KYLE CHADWICK
Board Judge